



MEMORANDUM

DATE: September 3, 2009

TO: Redmond Planning Commission

CC: Rob Odle
Jeff Churchill
RCDG Rewrite Team

FROM: James E. Haney, City Attorney

RE: Proposal to Remove Certain Provisions from the Community Development Guide

The purpose of this memorandum is to provide the rationale for removing certain provisions from the RCDG and for relocating others within the RCDG.

General Comments

The RCDG is intended to establish “goals, policies, and plans for the land use and development of the community.” RCDG 20A.10.20. While the RCDG certainly carries out this intent, it also includes a number of provisions that are not really development regulations. This is probably because the RCDG was intended to be a one-stop compendium of everything related in any way to the use of land. As the City moves forward with the rewrite process, however, the intent is to focus the new code on development regulations, making it easier to use for applicants and others alike. In keeping with that focus, staff and I are recommending that some matters currently dealt with in the RCDG be moved to the Redmond Municipal Code (RMC) and that some current RCDG regulations be repealed in their entirety.

Impact Fees

RCDG 20D.60 and 20D.210 contain the City’s fire, park, school, and transportation impact fees. In *New Castle Investments v. City of LaCenter*, 98 Wn. App. 224, 989 P.2d 569 (1999), *rev. den.* 140 Wn.2d 1019, 5 P.3d 9 (2000), the Washington Court of Appeals held that GMA-based

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impact fees are not land use controls or development regulations because, although they have some land use related objectives, they do not limit or change the way that land is developed. Because impact fees are not land use controls or development regulations, they don't fit the intent of the new code and staff and I are therefore proposing their removal from the RCDG and their relocation to the Redmond Municipal Code (RMC). The *New Castle Investments* court held that impact fees most closely resemble taxes because their purpose is to raise revenue to build public infrastructure and so the proposal is to move them into the taxes section of the RMC.

Moving the impact fee provisions into the RMC will not only achieve the goal of limiting the new code to development regulations, it will also avoid some potential legal issues. First, all development regulations have to be submitted to the Washington State Department of Commerce (formerly Community, Trade, and Economic Development) at least 60 days prior to adoption. Removing the fees from the RCDG will clarify that the City does not view them as development regulations and will avoid an argument that this step has to be taken. Second, all ordinances adopting development regulations are subject to appeal to the Growth Management Hearings Board. By removing these fees from the RCDG, the City will also avoid the potential argument that these are appealable. For all of these reasons, my recommendation and that of the staff is that the impact fee sections be moved out of the RCDG into the RMC.

Vesting

RCDG 20F.10.60 provides regulations relating to the vesting of applications against changes in development regulations. While cities can have vesting ordinances, most of what is in RCDG 20F.10.60 has been rendered unnecessary by the enactment of state vesting laws. RCW 19.27.095 establishes a statewide vesting rule for building permits. RCW 58.17.033 establishes a statewide vesting rule for subdivisions. These statutes, court cases interpreting them, and court cases establishing vesting rules for other types of permits have rendered RCDG 20F.10.60 obsolete. Removing these from the RCDG would avoid potential conflicts with the RCWs and the cases and default to those statutes and cases on vesting matters. For these reasons, my recommendation and that of staff is that RCDG 20F.10.60 be repealed.

Duties of Decision-Making Bodies

RCDG 20F.50 sets forth the duties, authorities, and qualifications of the code administrator, building official, technical committee, hearing examiner, design review board, planning commission, landmark commission, and code rewrite commission. While all of these matters must be covered somewhere in the City's ordinances, nothing requires that they all be in the RCDG. In fact, most cities see these types of regulations as administrative matters that properly reside in the administrative title (usually Title 2) of their municipal code. Removing the majority of these regulations from the RCDG to the RMC would fulfill the intent of limiting the new code to development regulations, i.e., what developers and the public need to know about developing property in Redmond. Removing and relocating these regulations would also enable them to be amended in a more expeditious manner as the need arises, since the DGA process would no longer have to be used. The Planning Commission and the other boards and commissions would of course have a role in reviewing and approving changes to the ordinances that affect them, but the process would be simpler. For these reasons, staff and I are recommending that RCDG 20F.50 be removed from the RCDG and relocated to the RMC.

Limitations on External Effects

RCDG 20D.95 regulates vibration, glare, heat, light, smoke, odor, radioactivity, electromagnetic interference, loading operations, and hazardous materials. These are all standards that relate to the operation of land uses and not the development of land. Because of that, they are not really development regulations and could be dealt with just as efficiently as nuisance regulations in the RMC. Staff and I therefore recommend that these regulations be removed from the RCDG and relocated to the RMC as part of the code rewrite process.

Noise Standards Unrelated to Development

RCDG 20D.100 establishes detailed restrictions on the generation of noise within the City. Some of these restrictions, like those on construction noise and those related to development on arterials are development-related and belong in the RCDG. Others, like those relating to loud stereos, the use of loudspeakers by businesses, and the operation of off-road vehicles, are not related to development at all and belong elsewhere. Staff and I are recommending that RCDG 20D.100 be substantially rewritten to remove the more nuisance-oriented regulations from the RCDG and relocate them to the RMC, while retaining development-related noise regulations in the RCDG.

Domestic Animals

Most of the City's animal control regulations are in the RMC. However, RCDG 20D.170 regulates animal boarding, kennels, shelters, and equestrian facilities. While there are certainly land use-related aspects of these matters, some of the regulations may be more properly relocated to the RMC with the other animal control provisions. The proposal from staff and I is to review these regulations with that idea in mind, i.e., to retain those portions of these regulations that relate to location and land use and move those portions that relate to operations to the RMC.

Special Uses

RCDG 20D.170 also establishes approval criteria for a number of other special uses, including auto-related businesses, banks with drive-throughs, telecommunications facilities and churches. Many of these criteria can probably be integrated into other sections of the RCDG to provide more clarity and to streamline the code for the ease of the reader. Staff and I will therefore be reviewing these provisions to see if some of them can be better integrated elsewhere.

Please let staff or I know if you have any questions or concerns regarding these proposals.

JEH:jeh